Supreme Court, U.S.
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(2)

NO. 90-1107

IN THE
SUPREME COURT
OF THE
UNITED STATES

OCTOBER TERM, 1990

MICHAEL R. MCGUIRE,

Petitioner,

v.

THE STATE OF WASHINGTON; RONALD O. BAILEY AND JANE DOE BAILEY, HIS WIFE, AND THE MARITAL COMMUNITY COMPOSED THEREOF,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE WASHINGTON STATE COURT OF APPEALS DIVISION II

RESPONDENTS' BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether, as a matter of state law, Mr. McGuire had a property interest in continued employment.

2. Whether the decision not to explain the basis for Mr. McGuire's termination infringed upon a constitutional interest in future employment.

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STATEMENT OF THE CASE

The Washington State Gambling Commission is a law enforcement agency that enforces the statutes and regulations concerning gambling activities. The petitioner, Michael McGuire, was an employee of the Commission and worked as a Special Agent IV conducting and supervising undercover investigative work in the Seattle area until his termination in May, 1988.

In April, 1988, Commission Director Ronald O. Bailey, respondent, received a complaint from a licensed gambling distributor of gambling products, Mr. Fred Gasperetti, con-

cerning an employee of his, Mr. Marco Courounes. Because of Mr. McGuire's close social association with Marco Courounes, Mr. Gasperetti requested that the Seattle office of the Commission not conduct the investigation of Mr. Courounes. It was Mr. Bailey's understanding that Mr. Gasperetti did not believe that petitioner McGuire would be impartial in investigating or supervising the investigation of his complaint against Mr. Courounes.

Due to the nature of Mr. Gasparetti's concern regarding the Seattle Office, Mr. Bailey initiated an investigation into the alleged social relationship between Mr. McGuire and Mr. Courounes. Mr. Bailey was concerned that such social association would be perceived by other licensees or other law enforcement agencies and the public as potentially affecting Mr. McGuire's required impartiality.

While being interviewed by the Assistant Director conducting the investigation, Mr. McGuire admitted that he had allowed licensees, such as Mr. Courounes, to pay for his greens fees, and had wagered with licensees, both occurring when he had not taken any money with him to the golf course. He played golf with Mr. Courounes over twenty times.

During the time frame when Mr. McGuire was golfing and socializing with Mr. Courounes, Mr. Courounes was being investigated for, charged with, convicted of, and on probation for criminal and administrative violations of the Washington State Gambling Act. Mr. McGuire's office had been in charge of the investigation against Mr. Courounes.

Mr. Bailey found nothing praiseworthy about Mr. McGuire openly consorting with a licensee who was being investigated for and then convicted of criminal violations of state gambling laws. As director of the Gambling Commission, Mr. Bailey found that the appearance of unfairness, favoritism, and lack of impartiality posed a substantial danger to the credibility of not only Mr. McGuire, but the Gambling Commission which he was representing.

On May 10, 1988, Mr. McGuire was informed that he would be terminated. He then immediately requested that he be allowed to come to Mr. Bailey's office to discuss this matter with him. Mr. Bailey agreed. At this meeting, Mr. Bailey told Mr. McGuire that his socializing with Mr. Courounes, despite his criminal gambling and administrative background, coupled with Mr. McGuire's admissions to accepting greens fees and wagering with licensees, compounded by the investigation's conclusion that he played golf during working hours, would result in McGuire no longer being employed by the Commission. Mr. McGuire, at this point in the meeting, told Mr. Bailey that this decision was "bull-shit" and where he came from, the acceptance of a $1,000-$2,000 gratuity wasn't even "hay feed."

Because Mr. McGuire's undercover investigative position was statutorily exempted from the state civil service system, he received a notice of termination which contained no specific information concerning the reasons for his termination. Appendix A contains a copy of the termination letter to Mr. McGuire. Only in response to this lawsuit did Mr. Bailey make public, through his Affidavits, the basis for his decision to terminate McGuire. *See* First and Second Affidavit of Ronald O. Bailey, Appendix B.

REASONS WHY THE PETITION SHOULD BE DENIED

A. Pursuant To Washington State Law The Petitioner Does Not Have A Property Interest In Continued Employment.

As a prerequisite to stating a cognizable due process claim, a plaintiff must demonstrate the existence of a constitutional property interest. *See Paul v. Davis*, 424 U.S. 693, 701, 96 S. Ct. 1155, 1160, 47 L. Ed. 2d 405 (1976). In order to have a property interest this court in *Board of Regents v. Roth*, 408 U.S. 564, 577, 92 S. Ct. 2701, 33 L. Ed. 2d 548 (1972) established the following test.

To have a property interest in a benefit, a person clear-

> ly must have more than an abstract need or desire for it. He must have more than a unilateral expectation of it. He must, instead have a legitimate claim of entitlement to it. * * * Property interests, of course, are not created by the constitution. Rather, they are created and their dimensions are defined by existing rules of understandings that stem from an independent source such as state law or understandings that secure certain benefits and that support claims of entitlement to those benefits.

Therefore, in order to have a due process expectation, Mr. McGuire must first have a property interest. The question of whether Mr. McGuire has a property interest is governed by state law. *Id.* Generally, under Washington law, a public employee has no vested property right in public employment and possesses no due process rights apart from the protections afforded by statute. *Jordan v. Oakville*, 106 Wn.2d 122, 720 P.2d 824 (1986); *Roberts v. ARCO*, 88 Wn.2d 887, 568 P.2d 764 (1977).

In *State Employees v. State*, 101 Wn.2d 536, 682 P.2d 869 (1984), the Washington State Supreme Court held:

> [T]he terms and conditions of public employment * * * are basically controlled by statute, not by contract * * * [as i]t is clearly within the province of the legislature to enact statutes regulating the 'mode and appointment and tenure in public employment.'"

101 Wn.2d at 541.

By statute, in Washington the majority of state employees are specifically protected by a comprehensive civil service merit system which provides that they can only be terminated for cause. *See* Chapter 41.06 RCW and Chapter 356 WAC (Washington Administrative Code). Mr. McGuire, as an undercover investigator for the Washington State Gambling Commission was specifically, statutorily, exempted from the civil service system. RCW 9.46.080 provides in relevant part that ". . . personnel occupying positions requiring the performing of undercover investigative work shall be exempt from the provisions of chapter 41.06 . . ." *See* Appendix C.

Accordingly, as a matter of state law Mr. McGuire has been statutorily exempted from the requirement that his termination be based upon cause. He is, therefore, without a cognizable property interest in continued employment. This was the holding of the Washington State Court of Appeals in *McGuire v. State*, 58 Wn. App. 195, ___ P.2d ___ (1990).

There is nothing novel or unexpected in this state court ruling. Indeed, it is widely recognized that state legislatures have the authority to exempt certain positions from civil service system protection. In *Salisbury v. Stone*, 518 A. 2d 1355, 1357 (R.I. 1986), the Rhode Island Supreme Court noted that because of Mr. Salisbury's status as an unclassified state employee, he served at the pleasure of the appointing authority and, as a matter of law, was without a cognizable property interest in continued employment. The court specifically noted:

> Salisbury's at will status is not predicated upon his employment for an indefinite term. Rather, it is predicated upon his employment as an unclassified state employee. Cases providing a rationale to alter the common law at will rule do not provide a valid rationale to alter the at will employment status established by the legislature for unclassified state employees.

Salisbury v. Stone, *supra*, at 1360.

Because the Washington State Legislature specifically exempted Mr. McGuire's position from any requirement that his termination be based upon cause, any attempt to confer such a benefit upon Mr. McGuire would be beyond the authority of the Washington State Gambling Commission. Such an attempt would be *ulta vires* and void as a matter of state law. *McGuire v. State*, *supra*, at 198-199.

It is a well recognized rule of law that a government employer cannot confer upon an employee a benefit of which the legislature has specifically, statutorily deprived the employee. Here again, in rejecting an implied contract theory advanced by Mr. Salisbury, the Rhode Island Supreme Court stated:

> Salisbury ignores the legal significance of his undisputable status as an unclassified state employee. As we later point out, the alleged preemployment promises, even if presumed to have been made, cannot as a matter of law, expand the limits imposed by the Legislature upon the termination rights of unclassified state employees.

Salisbury v. Stone, *supra*, at 1358. *See Ventetulo v. Burke*, 470 F. Supp. 887, 892, (D. R. I. 1978) *aff'd* 596 F.2d 476 (4th Cir. 1979).

On this same subject, in *Correa-Martinez v. Arrillaga-Belendez*, 903 F. 2d 49, 54-55 (1st Cir. 1990) the court, in interpreting the civil service system of the Puerto Rican judicial system noted the distinction between civil service positions which were terminable only for cause and the non-civil service "trust" position which the plaintiff had occupied. The court upheld the district court's dismissal pursuant to FRCP 12(b)(6) of the plaintiff's claim that an implied contract had been created through his engagement letter from the Director of Personnel. On this point the court stated:

> So, plaintiff's construct has force only if, and to the extent, that the personnel director could effectively limit OCA's statutory powers by adopting terms and conditions outside of, and flatly inconsistent with, the legislatively mandated criteria. This is a Houdini-in-reverse argument, which assumes that a government employer could be securely locked into a box that the legislature has purposely left wide open. We find altogether untenable the notion that civil service laws can be so nimbly sidestepped.
>
> * * *
>
> Indeed, for plaintiff's general argument to prevail, the carefully thought out civil service system could easily be wrecked by mid-echelon managers bent on shaping the system to their own ends.

Id. at 54-55.

Quite simply, the decision below correctly held that Mr. McGuire, under an implied contract theory, could not boot strap himself into a status of being terminable only for

cause, when the legislature had specifically exempted him from such status. *Accord Correa-Martinez v. Arrillaga-Belendez, supra*; *Salisbury v. Stone, supra*.

B. The Decision Not to Explain the Reasons for McGuire's Termination from Employment Did Not Implicate a Liberty Interest.

Mr. McGuire also alleges that his liberty interest in continued employment was violated when Mr. Bailey refused to inform other Seattle investigators of the basis for Mr. McGuire's termination. [1]

Roth states that the "concept of liberty recognizes two particular interests of a public employee: 1) the protection of his good name, . . . and 2) his freedom to take advantage of other employment opportunities." *Roth*, 408 U.S. at 573-74, 92 S.Ct. 2707.

The decision to terminate an employee by itself has some negative reflection on an individual, however that action alone does not assume a constitutional magnitude. *Hadley v. County of Du Page*, 715 F. 2d 1238 (1983); *Lipp v. Board of Education of City of Chicago*, 470 F. 2d 802, 805 (7th Cir. 1972); *Board of Regents v. Roth*, 408 U.S. at 573-74, 92 S. Ct. at 2707; *Mervin v. F.T.C.*, 591 F. 2d 821 (9th Cir. 1978); *Jordan v. Oakville*, 106 Wn.2d 122, 131, 720 P.2d 824 (1986).

In Mr. McGuire's case, the trial court determined that the only evidence that Mr. McGuire's reputation was damaged was his own conclusions and beliefs. The only testimony concerning his inability to obtain employment in the law enforcement field was his own self serving opinion that law enforcement agencies are suspicious of applicants who have been terminated.

---

[1]The only statement upon which Mr. McGuire bases his liberty interest claim—"There is more, a lot more, to it than playing golf and I'm not telling you anything else"—was also the basis for Mr. McGuire's defamation claim. The trial court found this statement was true, and that finding was not appealed. Therefore, Mr. McGuire's claim that he has been deprived of a constitutional liberty interest is based upon a true statement made by Mr. Bailey.

The trial court determined that this alone did not constitute proof of a violation of a liberty interest. Hence summary judgment was granted. *See also Duke v. Langdon*, 701 F. 2d 768 (D.C. Cir. 1983), (liberty interest violation not sustained where plaintiff could not allege any stigma or injury to her reputation beyond that inherent in any termination); *accord Mervin v. F.T.C., supra*, 591 F.2d at 828, (court dismissed the liberty claim when termination notice communicated only that plaintiff did not adequately perform his duties at FTC).

Merely being fired without explanation does not violate the Constitution of the United States.

CONCLUSION

Mr. McGuire was exempted from the requirement that his termination be based upon cause. As a matter of state law the Court of Appeals found that he was, therefore, terminable at will and did not have a property interest in continued employment. Because he does not have a property in continued employment he does not have a due process expectation and the state court was correct in dismissing his case. Regarding his claimed liberty interest deprivation, the actions of Mr. Bailey in not setting forth the reasons for Mr. McGuire's termination did not impugn Mr. McGuire's liberty interest in his future employment.

For the reasons given above, the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

KENNETH O. EIKENBERRY
Attorney General

MICHAEL P. LYNCH
Counsel of Record
ELIZABETH J. ERWIN
Assistant Attorneys General

APPENDIX A

May 26, 1988

Mr. Michael McGuire
14654 - 126th Avenue, N.E.
Kirkland, Washington 98033

Dear Mr. McGuire:

You are hereby notified that your employment with this agency is terminated effective at 5 p.m. on May 25, 1988.

Since you are employed in a non-civil service position which is exempt from Merit System Rules, you do not have the right to appeal this action to the Personnel Appeals Board.

I am attaching a memo from our fiscal office and a letter from the State Employees Insurance Board outlining the conditions under which you may continue to self-pay SEIB medical and dental coverages under new federal law, (COBRA).

If you have any questions concerning processing, pay, or any other matter relating to this action, please contact Carol Weber, Personnel Manager, at 753- 6161.

Sincerely
/s/ RONALD O. BAILEY
Director

ROB/CBW:rac
Enclosures
Certified
cc: Personnel

APPENDIX B

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON IN AND FOR THE COUNTY OF THURSTON

NO. 88-2-01425-3

MICHAEL R. McGUIRE,

Plaintiff,

vs.

THE STATE OF WASHINGTON
RONALD O. BAILEY and JANE DOE
BAILEY, his wife, and the
marital community composed thereof,

Defendants.

AFFIDAVIT OF RONALD O. BAILEY IN SUPPORT OF SUMMARY JUDGMENT

STATE OF WASHINGTON }
} ss
COUNTY OF THURSTON }

RONALD O. BAILEY being first duly sworn upon oath deposes and says:

1. I am currently the Director of the Washington State Gambling Commission. I was appointed to this exempt position by the Commissioners of the Washington State Gambling Commission in November of 1986.

2. I have been continuously employed by the Gambling Commission since 1974.

3. As one of my responsibilities as Director, I hire and take disciplinary action, including suspension and termination, concerning all employees of the Gambling Commission.

4. My office received a complaint in April of 1988 from a licensed distributor of gambling products, Mr. Fred Gasperetti, concerning an employee of his who is a licensed distributor representative, Mr. Marco Courounes. Mr.

Courounes geographic sales area is Seattle. Mr. Gasperetti alleged that Mr. Courounes was violating several WAC provisions which the Commission is charged to enforce. After making this formal complaint, Mr. Gasperetti requested that the Seattle Office of the Washington State Gambling Commission not conduct in the investigation of Mr. Courounes. Mr. Gasperetti requested this because it was his belief that Mr. Michael McGuire, a supervisor of the regional area for Mr. Courounes, had a close, social association with Mr. Courounes. The Regional Manager for Seattle, Mr. Robert DeForrest, was also cited as having a close, social association with various licensees. It was Mr. Gasperetti's concern, as he related it to me, that the Seattle office may not conduct a fair and impartial investigation concerning the allegations against Mr. Courounes.

5. Because the nature of Mr. Gasperetti's concern regarding the Seattle office, I initiated an investigation not only as to Mr. Courounes' potential violations of the rules and regulations of the Gambling Commission, but also of the alleged close association concerning Mr. McGuire and Mr. DeForrest. I believed that such concerns by Mr. Gasperetti raise very serious questions of the Gambling Commission's investigative integrity and potential personal and professional compromising of the enforcement ability of the Washington State Gambling Commission. I believed that because the Gambling Commission is a law enforcement agency that cooperates with other law enforcement agencies in receiving criminal information and intelligence, any allegation of this type concerning an employee could not go unchecked.

6. A formal investigation concerning the conduct of Mr. McGuire and Mr. DeForrest was done by the Special Investigations Unit of the Washington State Gambling Commission. Two investigators were assigned who took statements, obtained records, and interviewed various people connected to the allegations. A report was submitted to me which I read to determine the seriousness and validity of the allegations that Mr. McGuire and Mr. DeForrest

were potentially associating with licensees such that it was perceived by a member of the licensed public that they, as supervisors of the investigation, could not be unbiased.

7. On May 4, 1988, I reviewed the investigator's reports concerning Mr. McGuire. I instructed Assistant Director in charge of Special Agents, Richard Nicks, to go to Seattle and speak with Mr. McGuire concerning the allegations in the report. Mr. Nicks was instructed to determine Mr. McGuire's position with regards to each allegation contained in the report.

8. On May 5, 1988, Mr. Nicks informed me that he had spoken with Mr. McGuire concerning the allegations. On May 5, 1988, I asked Mr. Nicks and Deputy Director, Frank Miller, to review all the report and to consider the information that was supplied by Mr. McGuire personally to Mr. Nicks on May 5, 1988. Both Nicks and Miller were to make a recommendation with regards to the sufficiency of the allegations in the report and any appropriate discipline action, if any at all was warranted.

9. My review of the report submitted by the Special Investigation's Unit indicated that Mr. McGuire had began playing golf in 1986 through 1987 with Marco Courounes, a licensed distributor representative, as well as several other licensees. Mr. Courounes was currently under investigation by the Gambling Commission concerning violations of WAC 230, et. sec., as well as having been assessed a $13,000 civil penalty and placed on probation by the Washington State Gambling Commission concerning his violations of WAC rules in 1986. He was also criminally charged for the very same conduct for which the Gambling Commission placed him on probation. Mr. Courounes' criminal and administrative background was known to Mr. McGuire at the time he was playing golf with him as he was the Special Investigator who was responsible ultimately for the case which placed Mr. Courounes on probation, assessed a civil and criminal penalties.

10. The investigative report I reviewed indicated that Mr. McGuire did not demonstrate taking any time off from

work hours when he would engage in the social activity of golfing with Mr. Courounes. Mr. McGuire's time sheets demonstrated that he was not entitled to any compensatory time to utilize in lieu of annual leave for these social golf games. Nor did the reports reflect annual leave utilized for golf games. Mr. McGuire golfed mostly on Thursday afternoons.

11. Based on my review of the investigative report and the recommendations of Mr. Nicks and Mr. Miller to terminate Mr. McGuire, it was my belief that Mr. McGuire, by his repeated socializing with Mr. Courounes, who was on administrative probation and had a recent criminal conviction for gambling- related conduct, had compromised his integrity and ability to take enforcement action against Mr. Courounes and all the other licensees he had golfed with. I also believed that he had been compromised regarding all future enforcement actions with licensees. It was my opinion that as Mr. McGuire was the supervisor of a large portion of the geographical areas in Seattle, he had failed to keep an arm's length from those members of the public with whom he is to take or supervise the taking of possibility criminal and civil and/or administrative action. I lost confidence in Mr. McGuire's abilities and judgments concerning his social conduct with those people in the gambling industry for whom he acts as a police officer. Given his lack of judgment in how his socializing could and was viewed by the public, other licensees, and other law enforcement agencies, I felt that he could no longer be trusted with intelligence information supplied by the Organized Crime Unit of the Washington State Patrol as well as other law enforcement agencies in his geographic regions.

12. Mr. McGuire informed me on May 10, 1988, at which time he was formally notified of his termination by Mr. Nicks, that he had in fact also accepted greens fees from licensees upon occasion. Mr. McGuire told me that he would occasionally go to golf courses without money on hand. He would then receive greens fees which he would later pay back to which ever licensee loaned him the money.

It was my belief that Mr. McGuire may or may not have paid back all the greens fees he received. I did not believe that he had paid them all back. I believe that going to a golf course without money to pay for greens fees when the participants in the game were licensees is unacceptable. I believe this conduct demonstrates an unacceptable willingness by a law enforcement officer to accept a gratuity.

13. I also considered the information that Mr. McGuire did not take time off from his employment to either set up golf games or to participate in the games. It is my belief that he maintained a social association with licensees while being paid by the Washington State Gambling Commission.

14. In the May 10, 1988, meeting with Mr. McGuire I informed him that given Mr. Courounes criminal and administrative background, coupled with Mr. McGuire's admission to accepting greens fees, and playing golf during work hours, he would no longer be employed with the Washington State Gambling Commission. At that point in time Mr. McGuire expressed to me that my decision to terminate him was "bullshit" and that I had overreacted. He told me that there was nothing wrong with his conduct. He informed me that where he was from, the acceptance of one to two thousand dollars in gratuity was insignificant. Where he comes from such a gratuity is "not even hay feed".

15. After my discussion with Mr. McGuire on May 10, 1988, my decision to terminate Mr. McGuire remained firm. He display of insubordination to me and his failure to comprehend the seriousness of his misconduct reaffirmed my lack of confidence in his abilities. His attitude demonstrated a lack of concern for the Washington State Gambling Commission and how his conduct had and would impact the agency.

16. Based on my understanding of RCW 9.46.080, Mr. McGuire, because he was a Special Agent performing undercover investigative work, was an exempt employee. I informed Mr. McGuire that should he wish to resign rather

than be terminated by Gambling Commission, he could do so. Mr. McGuire elected not to resign and his employment was formally terminated on May 25, 1988.

17. I have not discussed Mr. McGuire's acceptance of greens fees from licensees while playing golf, his compensation by the Gambling Commission while playing golf, wagering with licensees, and Mr. McGuire's attitudes and displays of insubordination with any person outside of the Washington State Gambling Commission management employees, the Commissioners in executive session, and with legal counsel until my deposition as requested by Mr. McGuire.

I declare under penalty of perjury that the above is true and correct.

DATED this 13th day of January, 1989.

/S/ RONALD O. BAILEY

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON IN AND FOR THE COUNTY OF THURSTON

NO. 88-2-01425-3

MICHAEL R. McGUIRE,

Plaintiff,

vs.

THE STATE OF WASHINGTON RONALD O. BAILEY and JANE DOE BAILEY, his wife, and the marital community composed thereof,

Defendants.

SECOND AFFIDAVIT OF RONALD O. BAILEY IN SUPPORT OF SUMMARY JUDGMENT

STATE OF WASHINGTON } ss
COUNTY OF THURSTON }

RONALD O. BAILEY, being first duly sworn upon oath deposes and says:

1. I am the Director of the Washington State Gambling Commission. I have been so employed since November, 1986. In that capacity I have personal knowledge of the matters stated herein.

2. I first became aware that Mr. McGuire was alleged to have a social association with Mr. Courounes in April, 1988. It was at this time that I ordered an investigation concerning the allegations made by Fred Gasperetti in my first affidavit filed.

3. I have read the Affidavit of Michael R. McGuire filed herein.

4. The "personnel manuals, directives, memos, personnel evaluation materials, and WAC 356-34" referred to by Mr. McGuire were not intended, since my appointment as Director of the Washington State Gambling Commission, to provide Mr. McGuire with any contractual terms of employment. As Director, it was my understanding that

since all investigators such as Mr. McGuire were exempt from Chapter 41.06 RCW, the length of his employment was subject to my discretion.

5. As Director, I have not made any employment assurances to Gambling Commission employees who were exempted from Chapter 41.06 RCW. I had no authority from the Commission or the State of Washington to do so, as RCW 9.46.080, in my understanding of it, prohibited me from doing so.

6. I have not authorized or implemented any policy to act as terms of employment, to create an atmosphere of job security, or promise specific treatment of an individual employee in any specific situation.

7. Mr. McGuire did not file a grievance of his termination with the Washington State Gambling Commission.

8. In accord with the Command Policy on Discipline, prior to making my final decision concerning Mr. McGuire, I consulted with Assistant Director Nicks and Deputy Director Miller. I instructed them to each read the investigative report concerning Mr. McGuire and to formulate a disciplinary recommendation, if any at all. Both recommended to me that I terminate Mr. McGuire. I sought their respective opinions in order to be fair and just in determining whether Mr. McGuire should receive discipline.

9. The exempt job class description for Mr. McGuire's last held position with the Washington State Gambling Commission required the following job functions:

> Assists the Regional Manager is formation of regional policies and procedures or with special projects or presentations; may act for the Regional Manager in his/her absence and/or manage a field or district office. Assists in the selection, hiring, performance evaluation and proposed disciplinary actions of all assigned subordinate staff. Trains and supervises * * *lower level special agents. * * *
>
> Pursuant to RCW 9.46.080, this position shall be exempt from the provisions of Chapter 41.06 RCW. * * *
>
> . . Initiates, directs and supervises inspection of licensee's on-premise financial records, rules, and regula-

tions, gambling equipment, facilities, and methods of operation. Plans, directs, and supervises detailed financial investigations of licensed gambling activities to include in-depth review of all financial records to determine and ensure compliance with established financial controls; provides screening of licensed activities to determine compliance for financial reporting and to support division investigations.* * *

10. I was informed by Assistant Director Nicks that Mr. McGuire told him that he received loans of greens fees from at least Mr. Courounes. Mr. McGuire also admitted to me that he received loans for greens fees from Mr. Courounes.

I swear under penalty of perjury that the above is true and correct to the best of my knowledge.

DATED the 1st day of February, 1989.

/S/ RONALD O. BAILEY

SUBSCRIBED AND SWORN to before me this 1st day of February, 1989.

/S/ MAXINE WHITE

NOTARY PUBLIC in and for the State of Washington, residing at Olympia
Commission Expires: 9-10-91

APPENDIX C

RCW 9.46.080 provides:

* * * [P]ersonnel occupying positions requiring the performing of undercover investigative work shall be exempt from the provisions of chapter 41.06 RCW, as now law or hereafter amended.